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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

JANETTE PAINTER,

Plaintiff,

NO.

v.

COMPLAINT

ANDREW AND WILLIAMSON SALES,
CO.
dba
ANDREW & WILLIAMSON FRESH
PRODUCE, Inc.;

Jury Trial Demanded

Defendant.

COMES NOW the plaintiff, JANETTE PAINTER, by and through her attorneys of
record and allege as follows:

I. PARTIES

1.1 The plaintiff resides in Spanish Fork, Utah. The plaintiff is a citizen of the State of Utah.

1.2 The Defendant Andrew and Williamson Sales, Co. dba Andrew & Williamson Fresh Produce, Inc., (hereinafter “A&W”) is a California corporation with its principal place of business in California as well. A&W is, therefore, a foreign corporation and not a citizen of the State of Utah.

1.3 A&W imports, manufactures, distributes, and sells a variety of fresh produce products, including cucumbers. A&W imported, manufactured, distributed, and sold the cucumbers that the Centers for Disease Control and Prevention has determined to be the cause of an outbreak of at least 418 *Salmonella* Poona illnesses in 31 states, including 37 illnesses in the State of Utah alone. A&W’s cucumbers caused the *Salmonella* Poona illnesses suffered by the plaintiffs, as set forth in more detail below.

II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is between citizens of different states, and because the defendant has certain minimum contacts with the State of Utah such that the maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice.

2.2 Venue in the United States District Court for the District of Utah is proper

pursuant to 28 USC § 1391(a)(2) because a substantial part of the events or omissions giving rise to the plaintiffs' claims and causes of action occurred in this judicial district, and because the defendant was subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

III. GENERAL ALLEGATIONS

The *Salmonella* Poona Outbreak

3.1 The CDC, multiple states, and the U.S. Food and Drug Administration (FDA) are investigating a multistate outbreak of *Salmonella* Poona infections linked to imported cucumbers grown and packed by Rancho Don Juanito in Mexico and distributed by Defendant A&W.

3.2 Public health investigators are using the PulseNet system to identify illnesses that may be part of this outbreak. CDC coordinates PulseNet, the national subtyping network of public health and food regulatory agency laboratories. DNA "fingerprinting" is performed on *Salmonella* bacteria isolated from ill people by using a technique called pulsed-field gel electrophoresis, or PFGE. PulseNet manages a national database of these DNA "fingerprints" to identify possible outbreaks. Three DNA "fingerprints" (outbreak strains) are included in this investigation.

3.3 As of September 15, 2015, a total of 418 people infected with the outbreak strains of *Salmonella* Poona have been reported from 31 states. The number of ill people reported from each state is as follows: Alaska (10), Arizona (72), Arkansas (6), California (89), Colorado (16), Hawaii (1), Idaho (14), Illinois (6), Indiana (2), Kansas (1), Kentucky

(1), Louisiana (4), Minnesota (20), Missouri (8), Montana (13), Nebraska (2), Nevada (9), New Mexico (22), New York (4), North Dakota (2), Ohio (2), Oklahoma (10), Oregon (8), Pennsylvania (2), South Carolina (8), Texas (20), Utah (37), Virginia (1), Washington (15), Wisconsin (9), and Wyoming (4).

3.4 Among people for whom information is available, illnesses started on dates ranging from July 3, 2015 to August 30, 2015. Ill people range in age from less than 1 year to 99, with a median age of 15. Fifty-three percent of ill people are children younger than 18 years. Fifty-eight percent of ill people are female. Among 214 people with available information, 70 (33%) report being hospitalized. Three deaths have been reported from Arizona (1), California (1) and Texas (1).

3.5 On September 4, 2015, A&W voluntarily recalled all cucumbers sold under the “Limited Edition” brand label during the period from August 1, 2015 through September 3, 2015 because they may be contaminated with *Salmonella*. The type of cucumber is often referred to as a “slicer” or “American” cucumber. It is dark green in color and typical length is 7 to 10 inches. In retail locations it is typically sold in a bulk display without any individual packaging or plastic wrapping. Limited Edition cucumbers were distributed in the states of Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Mexico, Oklahoma, Oregon, South Carolina, Texas, and Utah and reached customers through retail, food service companies, wholesalers, and brokers. Further distribution to other states may have occurred.

Prior *Salmonella* Outbreaks Linked to Cucumbers

3.6 In 2014 a total of 275 cases were reported from 29 states and the District of Columbia. An additional 18 suspected cases not meeting the case definition were excluded from the analysis because they were found to be temporal outliers and unlikely to be related. Illness onset dates ranged from May 25 to September 29, 2014. Median age of patients was 42 years (range = <1–90 years); 66% (174 of 265) were female. Thirty-four percent (48 of 141) were hospitalized; one death was reported in an elderly man with bacteremia. A total of 101 patients were interviewed using the supplemental questionnaire about exposures in the week before illness onset. This questionnaire focused on leafy greens and tomatoes and contained smaller sections on fruit, vegetables, and seafood common to the Delmarva region.

3.7 In 2013 the CDC collaborated with public health officials in many states and the U.S. Food and Drug Administration (FDA) to investigate a multistate outbreak of *Salmonella* Saintpaul infections linked to imported cucumbers supplied by Daniel Cardenas Izabal and Miracle Greenhouse of Culiacán, Mexico and distributed by Tricar Sales, Inc. of Rio Rico, Arizona. A total of 84 persons infected with the outbreak strain of *Salmonella* Saintpaul were reported from 18 states. The number of ill persons identified in each state was as follows: Arizona (11), California (29), Colorado (2), Idaho (2), Illinois (3), Louisiana (1), Maryland (1), Massachusetts (1), Minnesota (9), Nevada (1), New Mexico (2), North Carolina (3), Ohio (3), Oregon (2), South Dakota (2), Texas (7), Virginia (3), and Wisconsin (2). Among persons for whom information was available, illness onset dates ranged from

January 12, 2013 to April 28, 2013. Ill persons ranged in age from less than 1 year to 89 years, with a median age of 27 years. Sixty-two percent of ill persons were female. Among 60 persons with available information, 17 (28%) were hospitalized. No deaths were reported.

Salmonella

3.8 The term *Salmonella* refers to a group or family of bacteria that variously cause illness in humans. The taxonomy and nomenclature of *Salmonella* have changed over the years and are still evolving. Currently, the Centers for Disease Control and Prevention (CDC) recognizes two species, which are divided into seven subspecies. These subspecies are divided into over 50 serogroups based on somatic (O) antigens present. The most common *Salmonella* serogroups are A, B, C, D, E, F, and G. Serogroups are further divided into over 2,500 serotypes. *Salmonella* serotypes are typically identified through a series of tests of antigenic formulas listed in a document called the Kauffmann-White Scheme published by the World Health Organization Collaborating Centre for Reference and Research on *Salmonella*.

3.9 *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of humans and other animals, including birds. *Salmonella* bacteria are usually transmitted to humans by eating foods contaminated with animal feces or foods that have been handled by infected food service workers who have practiced poor personal hygiene. Contaminated foods usually look and smell normal. Contaminated foods are often of animal origin, such as beef, poultry, milk, or eggs, but all foods, including vegetables, may become

contaminated. Many raw foods of animal origin are frequently contaminated, but thorough cooking kills *Salmonella*.

Medical Complications of Salmonellosis

3.10 The term reactive arthritis refers to an inflammation of one or more joints, following an infection localized at another site distant from the affected joints. The predominant site of the infection is the gastrointestinal tract. Several bacteria, including *Salmonella*, induce septic arthritis. The resulting joint pain and inflammation can resolve completely over time or permanent joint damage can occur.

3.11 The reactive arthritis associated with Reiter's may develop after a person eats food that has been tainted with bacteria. In a small number of persons, the joint inflammation is accompanied by conjunctivitis (inflammation of the eyes), and uveitis (painful urination). *Id.* This triad of symptoms is called Reiter's Syndrome. Reiter's syndrome, a form of reactive arthritis, is an uncommon but debilitating syndrome caused by gastrointestinal or genitourinary infections. The most common gastrointestinal bacteria involved are *Salmonella*, *Campylobacter*, *Yersinia*, and *Shigella*. A triad of arthritis, conjunctivitis, and urethritis characterizes Reiter's syndrome, although not all three symptoms occur in all affected individuals.

3.12 *Salmonella* is also a cause of a condition called post infectious irritable bowel syndrome (IBS), which is a chronic disorder characterized by alternating bouts of constipation and diarrhea, both of which are generally accompanied by abdominal cramping and pain. In one recent study, over one-third of IBS sufferers had had IBS for more than ten

years, with their symptoms remaining fairly constant over time. IBS sufferers typically experienced symptoms for an average of 8.1 days per month.

The Plaintiff's Illness

3.13 Janette Painter purchased ten cucumbers from a Macey's grocery in Spanish Fork, Utah, in the days leading up to the onset of her illness, as described below. The cucumbers that she purchased had been imported, manufactured, distributed and sold by A&W, and were contaminated by *Salmonella* Poona.

3.14 Ms. Painter consumed the contaminated cucumbers on August 8 and 9, 2015, and fell ill the evening of August 9, 2015 with gastrointestinal symptoms.

3.15 Ms. Painter's illness worsened dramatically on Monday, August 10. On Tuesday, August 11, she was hospitalized as a result of her illness. She would stay in the hospital for seven days, spending five days in the intensive care unit because her kidneys had failed. She also developed blood poisoning as a result of her *Salmonella* infection.

3.16 Ms. Painter has continued to suffer from symptoms of illness ever since her discharge from the hospital.

3.17 During her hospitalization, Ms. Painter tested positive for *Salmonella* Poona, matching the strain involved in the above-described Salmonella outbreak associated with A&W's cucumbers.

IV. CAUSES OF ACTION

Strict Liability—Count I

4.1 At all times relevant hereto, the defendant manufactured and sold the

adulterated food product that is the subject of the action.

4.2 The adulterated food product that the defendant manufactured, distributed, or sold was, at the time it left the defendant's control, defective and unreasonably dangerous for its ordinary and expected use because it contained *Salmonella* Poona, a harmful pathogen.

4.3 The adulterated food product that the defendant manufactured, distributed, or sold reached the plaintiff without any change in its defective condition. The adulterated food product that the defendant manufactured, distributed, or sold was used in the manner expected and intended, and was consumed by plaintiff.

4.4 Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the defendant manufactured, distributed, or sold.

Negligence—Count II

4.5 The defendant owed to the plaintiff a duty to use reasonable care in the manufacture, distribution, and sale of its food product, the observance of which duty would have prevented or eliminated the risk that the defendant's food products would become contaminated by *Salmonella* or any other dangerous pathogen. The defendant breached this duty.

4.6 The defendant had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to do so, and was therefore negligent.

4.7 The plaintiff is among the class of persons designed to be protected by these

statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and sale of similar food products.

4.8 The defendant had a duty to properly supervise, train, and monitor its employees, and to ensure its employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but the defendant failed to do so and was therefore negligent.

4.9 The defendant had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise complied with applicable federal, state, and local laws, ordinances, and regulations, and that were clean, free from adulteration, and safe for human consumption, but the defendant failed to do so and was therefore negligent.

4.10 As a direct and proximate result of the defendant's acts and omissions of negligence, the plaintiff sustained injuries and damages in an amount to be proven at trial.

Negligence Per Se—Count III

4.11 The defendant had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq*) and the Utah Wholesome Food Act (Utah Code Ann. § 4-5-1 through 20).

4.12 The defendant failed to comply with the provisions of the health and safety acts identified above, and, as a result, was negligent *per se* in its manufacture, distribution, and sale of food adulterated with *Salmonella*, a harmful pathogen.

4.13 As a direct and proximate result of conduct by the defendant that was negligent *per se*, the plaintiff sustained damages in an amount to be proven at trial.

DAMAGES

4.23 The plaintiff has suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of the defendant, in an amount that shall be fully proven at the time of trial. These damages include, but are not limited to: damages for general pain and suffering; damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress, past and future; pharmaceutical expenses, past and future; and all other ordinary, incidental, or consequential damages that would or could be reasonably anticipated to arise under the circumstances.

JURY DEMAND

The plaintiff hereby demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff pray for judgment against the defendant as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the plaintiff as a result of the defendant's conduct;
- B. Awarding plaintiffs statutory pre- and post-judgment interest;
- C. Awarding plaintiff her reasonable attorneys fees and costs, to the fullest extent allowed by law; and
- D. Granting all such additional and/or further relief as this Court deems just and

equitable.

DATED: September 22, 2015.

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/s/ William D. Marler

*(signed by Filing Attorney with permission of
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